

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:	ADMINISTRATIVE CONSENT ORDER
MARTIN MARIETTA MATERIALS, INC.	NO. 2008-AQ-17

TO: Martin Marietta Materials, Inc.  
CT Corporation, Registered Agent  
2222 Grand Avenue  
Des Moines, Iowa 50312

Martin Marietta Materials, Inc.  
Ryan Carlson, Environmental Engineer  
11252 Aurora Avenue  
Des Moines, Iowa 50322

**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Martin Marietta Materials, Inc. (Martin Marietta) for the purpose of resolving construction permitting violations which occurred at Martin Marietta sites in Iowa. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

**Relating to technical requirements:**

Bryan Bunton, Air Quality Bureau  
Iowa Department of Natural Resources  
7900 Hickman Road, Suite 1  
Urbandale, Iowa 50322  
Phone: 515/281-0363

**Relating to legal requirements:**

Anne Preziosi, Attorney for the DNR  
Iowa Department of Natural Resources  
7900 Hickman Road, Suite 1  
Urbandale, Iowa 50322  
Phone: 515/281-6243

**Payment of penalty to:**

Iowa Department of Natural Resources  
Henry A. Wallace Building  
Des Moines, Iowa 50319-0034

**II. JURISDICTION**

Pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) Chapter 10, which authorize the director to assess administrative penalties, the DNR has jurisdiction to issue this administrative consent order.

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**III. STATEMENT OF FACTS**

1. Martin Marietta employs approximately 5,200 people and is the second largest producer of crushed stone, sand and gravel in the United States. The headquarters of the Midwest Division is located at 11252 Aurora Ave in Des Moines, Iowa 50322. Martin Marietta maintains thirty-three locations throughout Iowa and also owns and operates portable equipment that is interchangeable between sites. Some of the sources at these facilities include diesel generators, crushers, diesel engines and storage tanks. DNR has issued air permits to Martin Marietta which allows the operation of equipment listed in Table A, Table B and Table C. Table C is a list of portable equipment and is an attachment to the permit. Table C must be updated whenever equipment is added.

460 KW DIESEL GENERATOR

2. On December 1, 1997, Martin Marietta installed and placed into operation a 460 kW diesel generator for use as portable equipment (facility PP-01-000) without a construction permit. On December 28, 2006, Martin Marietta submitted an application for a construction permit to DNR for the 460 kW diesel generator. On January 23, 2007, DNR issued Martin Marietta a Notice of Violation (NOV) letter for installing and running the 460 kW diesel generator without receiving a construction permit from DNR. On April 2, 2007, DNR issued Martin Marietta permit 07-A-274 for its 460 kW diesel generator.

3. On January 19, 2000, the DNR issued an amnesty from enforcement letter to Martin Marietta for the existing unpermitted air emission equipment.

1000 KW DIESEL GENERATOR

4. On March 20, 2002, Martin Marietta installed and placed into operation a 1000 kW diesel generator without a construction permit as part of one of its portable plants. Martin Marietta did not list it on Table C. On November 30, 2006, DNR inspected the Watterson Quarry facility in Mount Ayr, Iowa (facility 80-01-005). On December 4, 2006, the DNR issued a NOV to Martin Marietta for failure to obtain a construction permit prior to installing the 1000 kW diesel generator. On December 28, 2006, Martin Marietta submitted a construction permit application for the 1000 kW diesel generator to DNR for use as portable equipment. On April 2, 2007, the DNR issued permit no. 07-A-273 for the 1000 kW diesel generator.

1250 KW DIESEL GENERATOR

5. On April 29, 2005, Martin Marietta installed and placed into operation a 1250 kW diesel generator without a construction permit as part of one of its portable plants. Martin Marietta did not list it on Table C. On August 18, 2006, Martin Marietta submitted a construction permit application for the 1250 kW diesel generator to DNR for use as portable equipment. On September 18, 2006, DNR issued a NOV to Martin Marietta for failure to obtain a construction permit prior to installing the 1250 kW diesel generator on April 29, 2005. DNR issued permit 06-A-789 for the 1250 kW diesel generator.

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**IV. CONCLUSIONS OF LAW**

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-34 relating to air quality.
2. Pursuant to Iowa Code sections 455B.133 and 455B.134, 567 IAC 22.1(1) requires that a person who constructs, installs, reconstructs or alters equipment or control equipment must first obtain an air quality construction permit from the DNR, unless an exemption applies. Between the years 1997 and 2005, Martin Marietta installed and operated three portable diesel generators without first obtaining construction permits. Notice of Violation letters were issued for these violations on September 18, 2006, December 4, 2006, and January 23, 2007. The above facts indicate violations of this provision.

**V. ORDER**

THEREFORE, the DNR orders and Martin Marietta agrees to do the following:

1. Comply with air quality construction permit requirements in the future; and
2. Pay a penalty of \$6,500.00 within 60 days of the date the director signs this administrative consent order.

**VI. PENALTY**

Pursuant to the provisions of Iowa Code section 455B.109 and 567 IAC Chapter 10, which authorize the director to assess administrative penalties, a penalty of \$6,500.00 is assessed effective 30 days from the date this order is signed by the director. The penalty shall be paid within 60 days of the date this order is signed by the director. The administrative penalty is determined as follows:

Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to that provision.

Iowa Code section 455B.109 authorizes the Environmental Protection Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties through 567 IAC Chapter 10. Pursuant to this chapter, DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with a penalty of \$6,500. The administrative penalty assessed by this order is determined as follows:

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Economic Benefit – Martin Marietta gained an economic benefit by not obtaining the proper permits prior to installing and operating the diesel generators. Based on the above considerations, \$2,000.00 is assessed for this factor.

Gravity of the Violation – Martin Marietta's failure to obtain permits prior to construction of the 460 kW diesel generator prevented the DNR from evaluating the potential emissions and ambient air impacts from the as-built sources. The inability to review this project before construction prohibited the DNR from determining whether this source would meet all applicable emission limits and operating requirements. In addition Martin Marietta has a history of non-compliance with the requirement to obtain a construction permit prior to installation or modification of a new or existing unit. Violations of these types threaten the integrity of the regulatory program. Based on the above considerations, \$2,000.00 is assessed for this factor.

Culpability – Martin Marietta is fully aware of the requirement to have construction permits issued prior to initiating new construction or to update Table C when new equipment is added. Martin Marietta has previously obtained permits in the past for a large number of permanent and portable aggregate plants throughout the state and has amended Table C in other appropriate cases. In addition, Martin Marietta has received amnesty from an enforcement letter in 2000 for as-built sources, and received an NOV for failing to obtain a construction permit in 2001. Martin Marietta has a duty to remain alert to the possibility that its conduct is subject to DNR's regulation. Based on the above considerations, \$2,500.00 is assessed for this factor.

## VII. WAIVER OF APPEAL RIGHTS

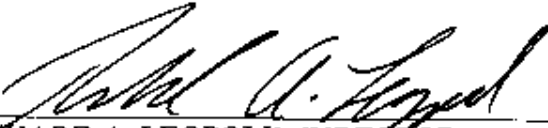
This administrative consent order is entered into knowingly and with the consent of Martin Marietta in the interest of avoiding litigation. For that reason, Martin Marietta waives its rights to appeal this order or any part thereof. The execution of this order by Martin Marietta is neither an admission of liability with respect to any issue covered under this order nor an admission or denial of any findings of fact or legal determinations stated or implied herein.

## VIII. NONCOMPLIANCE

Failure to comply with this order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.146. Compliance with Section "V. Order" of this administrative consent order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this administrative consent order. DNR reserves the right to bring enforcement action, including penalties, or to request that the attorney general initiate legal action to address other violations not described in Section "IV. Conclusions of Law" of this administrative consent order but which may arise from the facts summarized in Section "III. Statement of Facts" of this administrative consent order. DNR specifically reserves the right

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to pursue enforcement action, including penalties, for any current violations not specifically cited in this order.

  
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RICHARD A. LEOPOLD, DIRECTOR  
Iowa Department of Natural Resources

Dated this 11 day of  
July, 2008.

  
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For MARTIN MARIETTA MATERIALS, INC.  
Roselyn R. Bar  
Sr. Vice President and General Counsel

Dated this 26<sup>th</sup> day of  
June, 2008.

88-001-002; Anne Preziosi; Bryan Bunton; EPA; VII.A.1; VII.A.2